

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 11-10

March 30, 2011

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Lafe E. Solomon, Acting General Counsel

SUBJECT: Clarification of Memorandum GC 11-04

An issue has been raised regarding the “ex parte” language of the default provision announced in Memorandum GC 11-04. Specifically, some Agency stakeholders voiced concern that, pursuant to the provision, the General Counsel could file in the court of appeals a petition for enforcement of an order issued by the Board without notice to or opportunity for the respondent to appear and oppose entry by the court of an enforcing judgment. As this was not my intention, this memorandum provides an amendment to the default language and a statement of its purpose.

Language in default provisions allowing for the entry of the enforcing court judgment without proof of service upon respondent has been included in many Board informal settlement agreements in the past. Notwithstanding the presence of this “ex parte” language, the General Counsel routinely served or attempted to serve enforcement petitions on respondents and did not oppose their participation in court of appeals proceedings based thereon. The “ex parte” language has, however, proven particularly useful to secure a court judgment when respondents relocate without notice to the Board of a new address or otherwise successfully evade service.

To ensure that regional personnel are aware of my intent in seeking ex parte language in informal settlement agreement default provisions and to assure charged parties/respondents of our purpose in seeking that language, the default provision announced in GC Memorandum 11-04 is revised as set forth below (added language bolded). In addition, to make the default provision more succinct and clear, we have set out two provisions—one for situations where the settlement is reached after the complaint has already issued and one for settlements reached prior to issuance of complaint. The revised clauses are as follows:

Post-Complaint Informal Settlement

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the

Regional Director will reissue the complaint previously issued on [date] in the instant case(s). Thereafter, the General Counsel may file a **motion for default judgment**¹ with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, **after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.**

Pre-Complaint Informal Settlement

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint **that will include the allegations spelled out above in the Scope of Agreement section.** Thereafter, the General Counsel may file a **motion for default judgment** with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, **after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.**

¹ The language was changed from motion for summary judgment to motion for default judgment to more accurately reflect the type of motion that will be filed if the charged party fails to comply with the terms of the settlement agreement.

The addition of this language will make express the practice of the Regional Office to provide full notice to an adverse party of the commencement of enforcement proceedings where possible, but to protect against frustration of the purpose of the settlement agreement.

A second issue that has arisen since issuance of the memorandum is whether Regional Directors have any discretion to approve an informal settlement without the default language. While GC Memorandum 11-04 makes clear that default language should be routinely included in all informal settlements and compliance settlement agreements, if there is a substantial basis to vary from this policy, a Regional Director should consult with his or her Assistant General Counsel or Deputy to seek clearance to do so.

/s/
L. S.

cc: NLRBU
Release to Public

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